IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JESUS OROZCO ARROYO,	**:**	**4:19-CV-00490**
	:	
Petitioner,	**:**	**(Brann, J.)**
	:	
v.	**:**	**(Schwab, C.M.J.)**
	:	
WARDEN CLAIR DOLL, Warden, *et al.*,	**:**	
	:	**Electronically Filed**
Respondents.	**:**	

REPLY TO RESPONDENT'S SECOND SUPPLEMENTAL RESPONSE

On March 19, 2019, Orozco Arroyo, through counsel, filed a petition for writ of habeas corpus seeking either a bond hearing or his immediate release. (Doc. 1 at 11-12.) On March 22, 2019, the Court issued an order directing Respondents to show cause why Orozco Arroyo was not entitled to habeas relief. (Doc. 2.) On April 11, 2019, Respondent filed a response. (Doc. 4.) On May 14, 2019, the Court ordered Respondents to address Orozco Arroyo's argument that his criminal convictions do not subject him to mandatory detention. (Doc. 5.) Respondents submitted their Supplemental Response to this Court on May 28, 2019. (Doc. 6.) On June 11, Petitioner filed a Reply to the Supplemental Response. (Doc. 7) On June 14, 2019, the Court ordered Respondents to address the aforementioned Reply. (Doc.

8) On June 27, 2019, Respondents submitted their Second Supplemental Response. (Doc. 9) On June 28, 2019, the Court ordered that Petitioner file any Reply to the Second Supplemental Response by July 12, 2019. (Doc. 10) This Reply to Respondent's Second Supplemental Response is filed in accordance with that order.

Argument

Orozco Arroyo is not subject to mandatory detention pursuant to 8 U.S.C. § 1226(c). While it is true that Orozco Arroyo was convicted of possessing drug paraphernalia under 35 Pa. C.S. § 780-113(a)(32) on April 26, 2018, that conviction only subjects him to mandatory detention under 8 U.S.C. § 1226(c) if a conviction for possessing drug paraphernalia under 35 Pa. C.S. § 780-113(a)(32) "relates to" a controlled substance as described in 8 U.S.C. § 1227(a)(2)(B)(i). (Doc. 1; Ex. D, Removal Order.)

Respondents argue that "the question is not whether the information contained in Arroyo's conviction records is an adequate basis to support a charge of removability warranting a detailed analysis of the statute at issue but whether DHS is "substantially unlikely" to establish the charges that subject the alien to mandatory detention." (Doc. 9, p. 4) (citations omitted) Respondents argue further that "as long as DHS has a record that reflects that Arroyos' conviction involved marijuana

–which is a federally controlled substance –he is properly detained…" Id. In this case, DHS failed to charge Orozco Arroyo with removability under 8 U.S.C. § 1227(a)(2)(B)(i) and the Immigration Judge did not find Orozco Arroyo removable on the basis of his Pennsylvania conviction under 35 Pa. C.S. § 780-113(a)(32). Moreover, 8 U.S.C. § 1227(a)(2)(B)(i) houses an exception that does not permit DHS to charge an alien as removable if the conviction involves "a single offense involving possession for one's own use of 30 grams or less of marijuana." Respondents argue that Orozco Arroyo admitted to "possessing a marijuana grinder." (Doc. 9, p. 5) However, DHS never proved before the Immigration Judge that Orozco Arroyo possessed more than 30 grams of marijuana. Thus, Orozco Arroyo is not subject to mandatory detention under 8 U.S.C. § 1226(c).

Respectfully submitted,

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Dated: July 12, 2019

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on July 12, 2019, she served a copy of the attached

REPLY TO RESPONDENT'S SECOND SUPPLEMENTAL RESPONSE

by electronic service pursuant to Local Rule 5.7 and Standing Order 04-6, ¶ 12.2 to the following individuals:

Addressee(s):

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s/ Marcia Binder Ibrahim
Marcia Binder Ibrahim
Attorney for Petitioner